

AMENDED IN SENATE AUGUST 12, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2701

Introduced by Assembly Member Wyman
(Principal coauthor: Senator Chesbro)
(Coauthors: Assembly Members Dickerson, Harman,
Hollingsworth, and Strom-Martin)

February 22, 2002

An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, as amended, Wyman. Sales and use taxes: exclusions: Indian taxes.

The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state, or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms “sales price” and “gross receipts” do not include taxes imposed by an Indian tribe measured by a percentage of the sales price or purchase price of tangible personal property. *This bill would provide that this exclusion from the terms “sale price” and “gross receipts” would only apply to an Indian tribe that is in substantial compliance with the Sales and Use Tax Law.*

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemption from state sales

and use taxes enacted by the Legislature are incorporated into the local taxes. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6011 of the Revenue and Taxation Code
2 is amended to read:
3 6011. (a) "Sales price" means the total amount for which
4 tangible personal property is sold or leased or rented, as the case
5 may be, valued in money, whether paid in money or otherwise,
6 without any deduction on account of any of the following:
7 (1) The cost of the property sold.
8 (2) The cost of materials used, labor or service cost, interest
9 charged, losses, or any other expenses.
10 (3) The cost of transportation of the property, except as
11 excluded by other provisions of this section.
12 (b) The total amount for which the property is sold or leased or
13 rented includes all of the following:
14 (1) Any services that are a part of the sale.
15 (2) Any amount for which credit is given to the purchaser by
16 the seller.
17 (3) The amount of any tax imposed by the United States upon
18 producers and importers of gasoline and the amount of any tax
19 imposed pursuant to Part 2 (commencing with Section 7301) of
20 this division.
21 (c) "Sales price" does not include any of the following:
22 (1) Cash discounts allowed and taken on sales.
23 (2) The amount charged for property returned by customers
24 when that entire amount is refunded either in cash or credit, but this
25 exclusion shall not apply in any instance when the customer, in



order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid or for which the purchaser issues a certificate pursuant to Section 6245.5.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property, measured by a stated percentage of sales price or gross receipts, whether imposed upon the retailer or the consumer.

(6) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State of California with respect to the storage, use or other consumption in that city, county, city and county, or rapid transit district of tangible personal property measured by a stated percentage of sales price or purchase price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion

1 shall be applicable solely with respect to transportation which
2 occurs after the purchase of the property is made.

3 (8) Charges for transporting landfill from an excavation site to
4 a site specified by the purchaser, either if the charge is separately
5 stated and does not exceed a reasonable charge or if the entire
6 consideration consists of payment for transportation.

7 (9) The amount of any motor vehicle, mobilehome, or
8 commercial coach fee or tax imposed by and paid the State of
9 California that has been added to or is measured by a stated
10 percentage of the sales or purchase price of a motor vehicle,
11 mobilehome, or commercial coach.

12 (10) (A) The amount charged for intangible personal property
13 transferred with tangible personal property in any technology
14 transfer agreement, if the technology transfer agreement
15 separately states a reasonable price for the tangible personal
16 property.

17 (B) If the technology transfer agreement does not separately
18 state a price for the tangible personal property, and the tangible
19 personal property or like tangible personal property has been
20 previously sold or leased, or offered for sale or lease, to third
21 parties at a separate price, the price at which the tangible personal
22 property was sold, leased, or offered to third parties shall be used
23 to establish the retail fair market value of the tangible personal
24 property subject to tax. The remaining amount charged under the
25 technology transfer agreement is for the intangible personal
26 property transferred.

27 (C) If the technology transfer agreement does not separately
28 state a price for the tangible personal property, and the tangible
29 personal property or like tangible personal property has not been
30 previously sold or leased, or offered for sale or lease, to third
31 parties at a separate price, the retail fair market value shall be equal
32 to 200 percent of the cost of materials and labor used to produce
33 the tangible personal property subject to tax. The remaining
34 amount charged under the technology transfer agreement is for the
35 intangible personal property transferred.

36 (D) For purposes of this paragraph, “technology transfer
37 agreement” means any agreement under which a person who
38 holds a patent or copyright interest assigns or licenses to another
39 person the right to make and sell a product or to use a process that
40 is subject to the patent or copyright interest.

1 (11) The amount of any tax imposed upon diesel fuel pursuant
2 to Part 31 (commencing with Section 60001).

3 (12) (A) The amount of tax imposed by any Indian tribe within
4 the State of California with respect to a retail sale of tangible
5 personal property measured by a stated percentage of the sales or
6 purchase price, whether the tax is imposed upon the retailer or the
7 consumer.

8 (B) *The exclusion authorized by subparagraph (A) shall only*
9 *apply to those retailers who are in substantial compliance with this*
10 *part.*

11 SEC. 2. Section 6012 of the Revenue and Taxation Code is
12 amended to read:

13 6012. (a) “Gross receipts” mean the total amount of the sale
14 or lease or rental price, as the case may be, of the retail sales of
15 retailers, valued in money, whether received in money or
16 otherwise, without any deduction on account of any of the
17 following:

18 (1) The cost of the property sold. However, in accordance with
19 any rules and regulations as the board may prescribe, a deduction
20 may be taken if the retailer has purchased property for some other
21 purpose than resale, has reimbursed his or her vendor for tax which
22 the vendor is required to pay to the state or has paid the use tax with
23 respect to the property, and has resold the property prior to making
24 any use of the property other than retention, demonstration, or
25 display while holding it for sale in the regular course of business.
26 If that deduction is taken by the retailer, no refund or credit will be
27 allowed to his or her vendor with respect to the sale of the property.

28 (2) The cost of the materials used, labor or service cost, interest
29 paid, losses, or any other expense.

30 (3) The cost of transportation of the property, except as
31 excluded by other provisions of this section.

32 (4) The amount of any tax imposed by the United States upon
33 producers and importers of gasoline and the amount of any tax
34 imposed pursuant to Part 2 (commencing with Section 7301) of
35 this division.

36 (b) The total amount of the sale or lease or rental price includes
37 all of the following:

38 (1) Any services that are a part of the sale.

39 (2) All receipts, cash, credits and property of any kind.

1 (3) Any amount for which credit is allowed by the seller to the
2 purchaser.

3 (c) “Gross receipts” do not include any of the following:

4 (1) Cash discounts allowed and taken on sales.

5 (2) Sale price of property returned by customers when that
6 entire amount is refunded either in cash or credit, but this exclusion
7 shall not apply in any instance when the customer, in order to
8 obtain the refund, is required to purchase other property at a price
9 greater than the amount charged for the property that is returned.

10 For the purpose of this section, refund or credit of the entire
11 amount shall be deemed to be given when the purchase price less
12 rehandling and restocking costs are refunded or credited to the
13 customer. The amount withheld for rehandling and restocking
14 costs may be a percentage of the sales price determined by the
15 average cost of rehandling and restocking returned merchandise
16 during the previous accounting cycle.

17 (3) The price received for labor or services used in installing or
18 applying the property sold.

19 (4) (A) The amount of any tax (not including, however, any
20 manufacturers’ or importers’ excise tax, except as provided in
21 subparagraph (B)) imposed by the United States upon or with
22 respect to retail sales whether imposed upon the retailer or the
23 consumer.

24 (B) The amount of manufacturers’ or importers’ excise tax
25 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
26 Code for which the purchaser certifies that he or she is entitled to
27 either a direct refund or credit against his or her income tax for the
28 federal excise tax paid or for which the purchaser issues a
29 certificate pursuant to Section 6245.5.

30 (5) The amount of any tax imposed by any city, county, city and
31 county, or rapid transit district within the State of California upon
32 or with respect to retail sales of tangible personal property
33 measured by a stated percentage of sales price or gross receipts
34 whether imposed upon the retailer or the consumer.

35 (6) The amount of any tax imposed by any city, county, city and
36 county, or rapid transit district within the State of California with
37 respect to the storage, use or other consumption in that city, county,
38 city and county, or rapid transit district of tangible personal
39 property measured by a stated percentage of sales price or purchase
40 price, whether the tax is imposed upon the retailer or the consumer.

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser, but the exclusion shall not exceed a reasonable charge for transportation by facilities of the retailer or the cost to the retailer of transportation by other than facilities of the retailer. However, if the transportation is by facilities of the retailer, or the property is sold for a delivered price, this exclusion shall be applicable solely with respect to transportation which occurs after the sale of the property is made to the purchaser.

(8) Charges for transporting landfill from an excavation site to a site specified by the purchaser, either if the charge is separately stated and does not exceed a reasonable charge or if the entire consideration consists of payment for transportation.

(9) The amount of any motor vehicle, mobilehome, or commercial coach fee or tax imposed by and paid to the State of California that has been added to or is measured by a stated percentage of the sales or purchase price of a motor vehicle, mobilehome, or commercial coach.

(10) (A) The amount charged for intangible personal property transferred with tangible personal property in any technology transfer agreement, if the technology transfer agreement separately states a reasonable price for the tangible personal property.

(B) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the price at which the tangible personal property was sold, leased, or offered to third parties shall be used to establish the retail fair market value of the tangible personal property subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.

(C) If the technology transfer agreement does not separately state a price for the tangible personal property, and the tangible personal property or like tangible personal property has not been previously sold or leased, or offered for sale or lease, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the tangible personal property subject to tax. The remaining

1 amount charged under the technology transfer agreement is for the
2 intangible personal property transferred.

3 (D) For purposes of this paragraph, “technology transfer
4 agreement” means any agreement under which a person who
5 holds a patent or copyright interest assigns or licenses to another
6 person the right to make and sell a product or to use a process that
7 is subject to the patent or copyright interest.

8 (11) The amount of any tax imposed upon diesel fuel pursuant
9 to Part 31 (commencing with Section 60001).

10 (12) (A) The amount of tax imposed by any Indian tribe within
11 the State of California with respect to a retail sale of tangible
12 personal property measured by a stated percentage of the sales or
13 purchase price, whether the tax is imposed upon the retailer or the
14 consumer.

15 (B) *The exclusion authorized by subparagraph (A) shall only*
16 *apply to those retailers who are in substantial compliance with this*
17 *part.*

18 For purposes of the sales tax, if the retailers establish to the
19 satisfaction of the board that the sales tax has been added to the
20 total amount of the sale price and has not been absorbed by them,
21 the total amount of the sale price shall be deemed to be the amount
22 received exclusive of the tax imposed. Section 1656.1 of the Civil
23 Code shall apply in determining whether or not the retailers have
24 absorbed the sales tax.

25 SEC. 3. Notwithstanding Section 2230 of the Revenue and
26 Taxation Code, no appropriation is made by this act and the state
27 shall not reimburse any local agency for any sales and use tax
28 revenues lost by it under this act.

29 SEC. 4. This act provides for a tax levy within the meaning of
30 Article IV of the Constitution and shall go into immediate effect.
31 However, the provisions of this act shall become operative on the
32 first day of the first calendar quarter commencing more than 90
33 days after the effective date of this act.

